

Trust The Leaders

ISSUE 9 / FALL 2004

A MAGAZINE FOR SGR CLIENTS, FRIENDS AND COLLEAGUES

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SGR
SMITH, GAMBRELL & RUSSELL, LLP
ATTORNEYS AT LAW

The Associated Owners & Developers' 2004 National Conference

New Ways to Build and Manage Projects

Friday, September 10
Monday, September 13
Monday, September 27
Friday, October 1

The Wyndham Palace Resort and Spa, Orlando, FL
The Four Seasons Hotel, Miami, FL
The Ritz-Carlton Buckhead, Atlanta, GA
Hotel Pennsylvania, New York, NY

Led by Chair Ira Genberg & Vice-Chair Robert Preston Brown
of Smith, Gambrell & Russell, LLP

Panelists To Date Include Representatives From:

Allied North America
Amalgamated Glass
AMEC
ATOFINA
A.W. Hutchison Associates
BE&K
Bechtel Corporation
Brasfield & Gorrie
Bovis Lend Lease Holdings, Inc.
City of Atlanta
City Underwriting Agency
CNA
The Coca-Cola Company
Cochrane Group
Cousins Properties
Cushman & Wakefield, Inc.
Degussa Corporation
Deloitte Touche
Delta Air Lines
dEmiourgos
Duke Realty Corporation
DuPont
EMCOR
Enclos Corp.
Ernst & Young

Fluor Corporation
Foster Wheeler Corporation
FTI Consulting, Inc.
General Electric Company
Gilbane Building Company
Guignard Company
Hardin Construction Company, LLC
HCA
H. J. Russell & Company
Holder Construction Company
Home Depot
Intel Corporation
Johns Hopkins University
Kerzner International
Liberty Mutual
Marriott International
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Massachusetts Institute of Technology
Mactech Engineering
Mercedes-Benz USA
Mirant Corporation
Mitsubishi
Navigant Consulting, Inc.
New York City Transit Authority
The Nielsen-Wurster Group

Project Development International, Inc.
Princeton University
The Shaw Group, Inc.
Shimizu America Corporation
Siemens Westinghouse
Skanska USA Building Inc.
SkyeTec
Southwire Company
SunTrust Bank
Tetra Tech
Thompson, Ventulett, Stainback &
Associates
Tishman Realty & Construction
Travelers Insurance Company
Turner Construction Company
Tyco International
Tyco Thermal Controls
Univ. of California at Berkeley
Wachovia Bank
Walters & Wolf
Whiting-Turner Contracting Company
Winn-Dixie Stores
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An Industry Forum for Owners, Developers, Contractors, Architects, Engineers,
General Counsel, Lenders and Manufacturers

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THE APPEAL OF JACKSONVILLE

SGR's Jacksonville office positions the firm for growth in Florida. We think you'll agree that this city not only is a great place for business, but offers enjoyable entertainment and quality of life as well.

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Jim Monacell's perspective on Georgia's courthouses will have you searching for them on your next road trip.

LEGAL MINDS SO FOCUSED, THEY JUST CLICK.

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DESIGN AND PRODUCTION

Atlanta Magazine

Trust The Leaders Magazine is published by



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From the Editor

On May 26, 2004, Smith, Gambrell & Russell lost a distinguished partner and friend, Robert P. Forrestal. As many of you know, Bob Forrestal had a long and notable career with the Federal Reserve System, after which he joined SGR. Bob started with the Federal Reserve in 1964, moving to the Federal Reserve Bank of Atlanta in 1970 where he served as General Counsel, then First Vice President and Chief Operating Officer and, lastly, President and Chief Executive Officer from 1983 until his retirement in December 1995. He was a most accomplished individual, not only professionally but personally as well, being a gifted musician, vocalist and linguist. Although at the time of his death he was retired from active law practice, he came to the office frequently and will always be remembered for his kind and gentle nature—he will be missed and we extend our sincere sympathies to his wife and family.

On a happier note, we are proud to inform you that *Trust The Leaders* was selected as the winner of the 2004 Burton Award for Outstanding Legal Publication. The Burton Foundation is a volunteer, not-for-profit academic organization concentrating on legal writing and was founded by William Burton, attorney and author of *Burton's Legal Thesaurus*. Now in its fifth year, the Burton National Awards Program recognizes law firms and law students for excellence in legal writing. *Trust The Leaders* was awarded the Burton Award for Outstanding Legal Publication for the use of plain, modern language and avoidance of archaic, stilted legalese. Our

managing partner, Steve Forte, accepted the award on behalf of the firm in the Great Hall of the Library of Congress on June 14th. This is truly a firm-wide achievement, thanks to the many SGR attorneys who have participated in the publication of *Trust The Leaders* over the past two years.

This issue's cover story gives you a look at the daunting changes and expansion of discovery in litigation in the Internet age. After you read this article, you may be more thoughtful with your e-mail correspondence before hitting the "Send" button!

We have put something new in this issue—a profile on the City of Jacksonville, where SGR opened its Florida office in 2001 and the site of the 2005 Super Bowl. Whether you have visited Jacksonville before, live there now or plan to visit, this article will give you insight into the many places to see and things to do.

This issue also includes a guide to the process of acquiring assets out of bankruptcy, which can be strategically advantageous to the acquirer under the right circumstances. And for employers, read about the new Department of Labor overtime rules going into effect on August 23, 2004, which will impact various classifications of employees.

Of interest to Georgia property owners is a piece on the Georgia State Bar Real Property Law Section's successful efforts to enact legislation this year that should facilitate real estate closings for both commercial and residential sellers.

And finally, The Finish Line takes you on a photographic tour of the many beautiful and historic courthouses in the State of Georgia, captured on film by



one of SGR's partners in furtherance of his interest in and love of photography.

A handwritten signature in blue ink that reads "Terry F. Schwartz". The signature is written in a cursive, flowing style.

Terry Ferraro Schwartz
Editor in Chief
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by David Burge

Georgia State Bar Real Property Law Section: 2004 Legislative Initiative

Throughout the firm's history, Smith, Gambrell & Russell lawyers have held leadership positions in national, state and local bar associations. I am a member of the Executive Committee of the State Bar of Georgia Real Property Law Section and was named the Section's Legislative Chairman in May 2003. In this capacity, I recently led a successful effort to enact legislation in Georgia that should facilitate real estate closings for both commercial and residential sellers.

The Georgia General Assembly is a part-time legislative body that meets for only 40 days each year and has a very limited legislative staff. Given this, the State Bar of Georgia has historically played a major role in proposing and advising on legislation that affects the whole spectrum of legal issues handled by lawyers in Georgia. Each year, the

various sections in the State Bar are encouraged to propose changes to the Georgia Code that would enhance the practice of law for that section's particular practice area. Each section is also called upon to comment and advise on legislation proposed by others that would affect that section's practice area.

Throughout the summer of 2003, my legislative subcommittee solicited input from members of the Real Property Law Section on issues and problems that affect real estate closings and practice in Georgia that could be addressed by legislative changes. A common complaint received by the subcommittee was the difficulty encountered by closing attorneys in clearing up old judgment liens that had been filed against a property seller in prior years and paid off, but not yet cancelled in the county courthouse records. Even if the judgment lien has

been fully paid off, the filed lien remains a cloud on title for all real estate owned by that seller in that particular county until the lien itself is cancelled of record. Then existing Georgia law set forth a general obligation to cancel judgment liens after full payment, but provided no penalties or alternatives if the judgment creditor failed to cancel its lien at the courthouse. Since the judgment creditor had already received its money and often had limited motivation to cancel its lien in the courthouse records, closing attorneys asked for additional tools to require judgment creditors to cancel stale liens in a timely manner.

I chose this issue as the Section's legislative initiative for the 2004 General Assembly Session. The first step was to draft a proposed bill. Georgia already had on its books legislative provisions that require the holder of a mortgage to cancel that mortgage promptly once the loan is paid off and provide penalties and alternative mortgage cancellation methods when mortgage holders fail to cancel their mortgage upon receipt of full payment. These existing provisions in the Georgia Code have helped closing attorneys get old mortgages cancelled in a more timely manner. Our subcommittee decided that borrowing this existing legislation for mortgages and applying it to judgment liens would be the most efficient way to help clear up stale

2004 is an election year,
which historically makes
passing legislation
more difficult.

